

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

MR. MICHAEL MOATES,

Plaintiff,

V.

LONE STAR COLLEGE SYSTEM,
DR. HRISAFIA BEKIARIS, DR. JESS
KELLY, AND LESLIEANN THOMAS,
DR. CHRISTOPHER ALLEN, AND
ALICIA GUEVARA,

Defendants.

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CIV. A. NO. _____

JURY TRIAL DEMANDED

Notice of Removal

Defendant Lone Star College System files this Notice of Removal of Plaintiff Michael Moates' Amended Petition filed in the 362nd Judicial District Court of Denton County Texas, pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, and pursuant to Local Rule CV-81. As explained below, Plaintiff's Original and Amended Petitions purport to assert federal claims under the Americans with Disabilities Act and the Rehabilitation Act over which this Court has original jurisdiction. Plaintiff also purports to assert state law claims over which this Court has supplemental jurisdiction.¹

I. The Statement of the Case

LSC is a junior college and political subdivision of the State of Texas that offers associates and bachelor's degrees. It is headquartered in The Woodlands, Montgomery County, Texas. Plaintiff is an LSC student and takes classes online. Plaintiff's claims stem from an

¹ Defendant Lone Star College System reserves all claims of immunity and defenses against Plaintiff's claims. LSC reserves all rights regarding the same, including the right to seek a transfer of venue.

alleged failure to accommodate various disabilities (ADHD, sleep apnea, anxiety, insomnia, depression, asthma, and dysgraphia), specifically regarding the manner in which he may complete exams and other class-related assignments.

Pursuant to Local Rule CV-81, the following papers from the state court are attached to this removal:

Exhibit	Paper
A	Docket Sheet
B	Plaintiff's Original Petition
C	Plaintiff's Amended Petition
D	Plaintiff's Application for Temporary Restraining Order and Temporary Injunction

On July 29, 2021, Plaintiff filed his Original Petition in the 362nd District Court of Denton County, Texas, Cause No. 21-6417-362. Exhibit B. The address of the state court is 1450 E McKinney Street, 3rd Floor, Denton, TX 76209. The Original Petition alleges that LSC failed to accommodate Plaintiff's disabilities in violation of Titles II and III of the Americans with Disabilities Act. *Id.* Specifically, Plaintiff asserts that he brings his claims "under 28 U.S.C. §§ 1331 & 1345 and Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12133." *Id.* at p. 2. Plaintiff further asserts a claim under "Title III of the ADA" and references "42 U.S.C. § 12182(a)." *Id.* at p. 9. Plaintiff also purports to assert a claim under Section 504 of the Rehabilitation Act. *Id.*

Plaintiff's Original Petition also purports to assert a state law claim under the Texas Business & Commerce Code § 503.001 (Biometric Identifiers). Specifically, Plaintiff alleges

that LSC improperly obtained and used biometric information through facial recognition software. *Id.* Plaintiff also purports to assert a claim under Chapter 121 of the Texas Human Resources Code for failure to accommodate.

On August 5, 2021, Plaintiff filed an Amended Petition, which is now the operative pleading in this case. Exhibit C. The Amended Petition also asserts claims under the ADA and Section 504 of the Rehabilitation Act, and adds a claim under the Family Educational and Privacy Rights Act (28 U.S.C. § 1232). Plaintiff also added claims for violation of the Texas Constitution, Texas Deceptive Trade Practices Act, and for Intentional Infliction of Emotional Distress. *Id.*

II. The Parties and Attorneys of Record

Party	Attorney of Record
Plaintiff Michael Moates	Pro Se
Defendant Lone Star College System	Stephen J. Quezada Texas SBN: 24076195 Fed. I.D. 1348753 Gray Reed & McGraw LLP 1300 Post Oak Blvd., Ste. 2000 Houston, Texas 77056 Phone: 713-986-7215 squezada@grayreed.com
Defendant Dr. Hrisafia Bekiaris	Not yet served at the time of removal.
Defendant Dr. Jess Kelly	Not yet served at the time of removal.
Defendant Leslieann Thomas	Not yet served at the time of removal.
Defendant Dr. Christopher Allen	Not yet served at the time of removal
Defendant Alicia Guevara	Not yet served at the time of removal.

III. The Amended Petition Asserts Federal Claims

This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1331 because it involves claims arising under the law of the United States. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367. Removal is therefore proper pursuant to 28 U.S.C. § 1441.

IV. Removal to this Court is Proper

Removal to the Eastern District of Texas is proper, as it is the federal district and division in which the state court action is pending. LSC, however, reserves its right to seek a transfer of venue to the United States District for the Southern District of Texas, Houston Division.

V. Removal is Timely

Pursuant to 28 U.S.C. § 1446(b), removal is timely. Plaintiff served LSC via certified mail on August 9, 2021. No individual defendant has been served. Neither LSC nor any other party has filed a responsive pleading in the state court.

VI. State Court Pleadings

A complete copy of the pleadings from the state court file, and the docket sheet, is attached to this Notice. Plaintiff filed an Original Petition, Amended Petition, and an Application for Temporary Restraining Order and Temporary Injunction. There have been no orders entered by the state court.

VII. Notice to the State Court

LSC will file a notice of removal with the 362nd Judicial District Court of Denton County, Texas on the same day that this removal is filed.

VIII. Service on Plaintiff

A copy of this Notice of Removal will be served on Plaintiff.

IX. Jury Demand

Plaintiff made a jury demand in the state court. *See* Exs. B and C. Plaintiff had not, however, paid any jury fee.

X. Conclusion

For all these reasons, LSC removes Plaintiff's Original Petition to this Court.

Respectfully submitted,

Gray Reed & McGraw LLP

/s/ Stephen J. Quezada
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Certificate of Service

I hereby certify that the foregoing paper was served on Plaintiff Michael Moates via email and certified mail, return receipt requested, as follows:

Michael Moates
2700 Colorado Boulevard #1526
Denton, TX 76210
michaelsmoates@gmail.com

/s/ Stephen J. Quezada
Stephen J. Quezada